IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 16TH OCTOBER 2007 / 24TH ASWINA 1929

Bail Appl..No. 5679 of 2007()

CRIME NO.335/05 OF THE KALLAMBALAM POLICE STATION

PETITIONER:

SIJU.D, S/O,DIVAKARAN, KATTUVILA
VEEDU,. CHITTAICODE, NAVAIKULAM
THIRUVANANTHAPURAM DIST.

BY ADV. SRI. K.SIJU

RESPONDENTS:

STATE OF KERALA
REPRESENTED BY S.I.OF POLICE,
KALLAMBALAM POLICE STATION THROUGH PUBLIC
PROSECUTOR , HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 16/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 5679 OF 2007

Dated this the 16th day of October, 2007

ORDER

Application for anticipatory bail. The petitioner apprehends arrest as accused No.3 in a pending prosecution under Sec.308 of the IPC. Final report has already been filed. Accused No.3 is shown as one Shibu, S/o. Sivan. According to the petitioner, he is not the said accused. His name is Siju and he is the son of Divakaran. But the petitioner was sought to be arrested as the 3rd accused. It is, in these circumstances, that the petitioner has come to this Court.

2. Interim directions were issued on 19/9/07. The petitioner had appeared before the Investigating Officer. Final report has been filed by an earlier incumbent and the present officer in charge is now satisfied that there has been an error in the description of the 3rd accused. He has filed an

application to reopen the investigation under Sec.173(8) of the Cr.P.C. Further steps are being taken. A formal report arraying the petitioner as the accused is yet to be filed. The petitioner, in these circumstances, apprehends arrest.

3. The learned Public Prosecutor asserts that the petitioner is the person to be arrested as the 3rd accused though a proper further report has to be filed in the matter.

4. The learned counsel for the petitioner prays and the learned Public Prosecutor does not oppose the said prayer and I am satisfied that the petitioner can, in these circumstances, be granted anticipatory bail.

5. In the result, this petition is allowed. Following directions are issued under Sec.438 of the Cr.P.C:

(i) The petitioner shall appear before the learned Magistrate having jurisdiction at 11 a.m. on 23/10/07. He shall be granted regular bail as the 3rd accused in the crime (notwithstanding the fact that the formal report arraying him by his specific name and details has not been submitted to the Magistrate) on condition that he executes a bond for Rs.50,000/- with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(ii) The petitioner shall make himself available for

interrogation before the Investigating Officer between 10 a.m. and 3 p.m. on 24/10/07 and 25/10/07 and thereafter on all Mondays and Fridays between 10 a.m. and 12 noon for a period of two months. Subsequently, he shall so make himself available for interrogation before the Investigating Officer as and when directed by the Investigating Officer in writing to do so.

(iii) If the petitioner does not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioner and deal with him in accordance with law as if these directions were not issued at all;

(iv) If the petitioner were arrested prior to his surrender on 23/10/07 as directed in clause (i) above, he shall be released on his executing a bond for Rs.50,000/- without any sureties undertaking to appear before the learned Magistrate on 23/10/07.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge